

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

HENRY PERSINGER,

Petitioner,

v.

CIVIL ACTION NO. 5:03-0618

THOMAS MCBRIDE, Warden,
Mount Olive Correctional Complex,

Respondent.

ORDER

By Standing Order entered on May 20, 2002, and filed in this case on July 3, 2003, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on July 20, 2005, and proposed that this court (1) confirm and accept the Magistrate Judge's findings contained within his Proposed Findings and Recommendation, (2) grant respondent's motion for summary judgment (Docket No. 18), (3) dismiss petitioner's petition under 28 U.S.C. § 2254 (Docket No. 1), and (4) direct the Clerk to remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed

Findings and Recommendation. The failure of any party to file objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). Moreover, this court need not conduct a de novo review when a petitioner "makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982).

Here, petitioner timely filed objections to the Magistrate Judge's Proposed Findings and Recommendations. In his objections, petitioner notes that the Magistrate Judge erred because he failed to understand the issues in this case. Petitioner also argues that the court failed to take notice of the fact that respondent failed to respond on time regarding a court order in a previous case. These objections are "general and conclusory" as discussed in Orpiano in that they do not direct the district court to any specific errors in the Proposed Findings and Recommendations and instead only restate arguments contained in petitioner's earlier pleadings. See 687 F.2d at 47. As such, the court need not conduct de novo review.

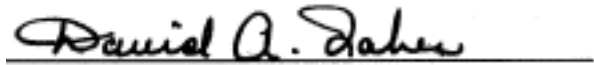
Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court (1) CONFIRMS and ACCEPTS the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, (2) GRANTS respondent's

Motion for Summary judgment (Docket No. 18), and (3) DISMISSES petitioner's § 2254 Petition (Docket No. 1).

The Clerk is directed to remove this action from the active docket of this court. The Clerk is further directed to forward a certified copy of this Order to all counsel of record and the plaintiff, pro se.

IT IS SO ORDERED this 15th day of September, 2005.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge